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**UNITED STATES DEPARTMENT OF JUSTICE
DRUG ENFORCEMENT ADMINISTRATION**

**RICHARD W. WALKER, Jr., M.D.
DECISION AND ORDER**

On October 3, 2016, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Richard W. Walker, M.D. (Registrant), of League City, Texas. The Show Cause Order proposed the revocation of his DEA Certificate of Registration No. AW2558750, on the ground that he does not have authority to dispense controlled substances in Texas, the State in which he is registered with the Agency. Order to Show Cause, at 1 (citing 21 U.S.C. §§ 823(f) and 824(a)(3)).

With respect to the Agency's jurisdiction, the Show Cause Order alleged that Registrant is the holder of Registration No. AW2558750, pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner, at the registered address of 4604 Hispania View Drive, League City, Texas. *Id.* The Order also alleges that Registrant's registration does not expire until May 31, 2017. *Id.*

As ground for the proposed action, the Show Cause Order alleged that "[t]he Texas Medical Board issued an order, effective June 10, 2016, which accepted [the] surrender of [his] authority to practice medicine." *Id.* The Order thus asserted that as a consequence of the Board's action, Registrant is without authority to dispense controlled substances in Texas, the State in which he is registered, and thus, "DEA must revoke" his Registration. *Id.* at 1 (citing 21 U.S.C. §§ 802(21), 823(f)(1) and 824(a)(3)).

The Show Cause Order notified Registrant of his right to request a hearing on the allegations or to submit a written statement in lieu of a hearing, the procedure for electing either option, and the consequence of failing to elect either option. *Id.* at 2 (citing 21 CFR 1301.43). The Show Cause Order also notified Registrant of his right to submit a corrective action plan. *Id.* at 2-3 (citing 21 U.S.C. § 824(c)(2)(C)).

On or about October 3, 2016, a Diversion Investigator (DI) from the Houston Division Office sent the Order to Show Cause by Certified Mail to Registrant at the address of his registered location. Appendix 4, at 2 (Declaration of DI). According to the DI, on or about October 11, 2016 she received back the signed return-receipt card showing that the Show Cause Order had been received at Registrant's registered address. *Id.* at 2. The DI further averred that while the date of receipt was not marked on the card, the Postal Service's website shows that the mailing "was signed for on October 7, 2016." *Id.*

On December 12, 2016, the Government submitted a Request for Final Agency Action (RFFA) and an evidentiary record to my Office. Therein, the Government represents that more than 30 days have passed since the Order to Show Cause was served on Registrant and that it "has not received a request for hearing or any other reply from" Registrant. RFFA at 2.

Based on the Government's representation and the record, I find that more than 30 days have passed since the date of service of the Show Cause Order, and that neither Registrant, nor anyone purporting to represent him, has requested a hearing or submitted a written statement in lieu of a hearing. I therefore find that Registrant has waived his right to a hearing or to submit a written statement in lieu of a hearing, and issue this Decision and Order based on relevant evidence contained in the record submitted by the Government. 21 CFR 1301.43(d) & (e). I make the following findings of fact.

FINDINGS

Registrant is the holder of Certificate of Registration No. AW2558750, pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner, at the registered address of 4604 Hispania View Drive, League City, Texas; his registration does not expire until May 31, 2017. Appendix 2 (Certificate of Registration).

On June 10, 2016, Registrant entered into an Agreed Order of Revocation with the Texas Medical Board (the Board) “to avoid further investigation, hearings, and the expense and inconvenience of litigation.” Appendix 3, at 4 (Agreed Order of Revocation). The Board specifically found that Registrant “failed to adequately supervise his prescriptive delegate . . . who non[-]therapeutically prescribed controlled substances and who operated an unregistered pain management clinic.” *Id.* at 3. While “[n]one of the patients involved in the allegations were [his] personal patients” and Registrant “denied the allegation,” he “surrender[ed] his license because of his inability to practice due to health reasons.” *Id.* He further “accept[ed] that the revocation of his Texas medical license will be accepted in lieu of further disciplinary proceedings and that it [was] effective on the date of the entry of th[e] Agreed Order.” *Id.* See also *id.* at 4 (citing Tex. Occ. Code Ann. §§ 164.053(a)(8) and 164.057; 22 Tex. Admin. Code 196.2). The Board thus ordered that Registrant’s medical license be revoked and that he “immediately cease practice in Texas.” *Id.*

Based on the Board’s Order, and Registrant’s failure to submit any evidence to show that his medical license has been reinstated, I find that Registrant is no longer currently authorized to dispense controlled substances in Texas, the State in which he is registered with the Agency.

DISCUSSION

Pursuant to 21 U.S.C. § 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of Title 21, “upon a finding that the registrant . . . has had [his] State license . . . suspended [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.” With respect to a practitioner, DEA has repeatedly held that the possession of authority to dispense controlled substances under the laws of the State in which he engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner’s registration. *See, e.g., James L. Hooper*, 76 FR 71371 (2011), *pet. for rev. denied*, 481 Fed. Appx. 826 (4th Cir. 2012); *see also Frederick Marsh Blanton*, 43 FR 27616 (1978) (“State authorization to dispense or otherwise handle controlled substances is a prerequisite to the issuance and maintenance of a Federal controlled substances registration.”).

This rule derives from the text of two provisions of the CSA. First, Congress defined “the term ‘practitioner’ [to] mean[] a . . . physician . . . or other person licensed, registered or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C. § 802(21). Second, in setting the requirements for obtaining a practitioner’s registration, Congress directed that “[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” 21 U.S.C. § 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the Act, DEA has held repeatedly that revocation of a practitioner’s registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the State in which he practices medicine. *See, e.g., Calvin Ramsey*, 76 FR 20034, 20036 (2011); *Sheran Arden Yeates, M.D.*,

71 FR 39130, 39131 (2006); *Dominick A. Ricci*, 58 FR 51104, 51105 (1993); *Bobby Watts*, 53 FR 11919, 11920 (1988); *Blanton*, 43 FR at 27616.

As found above, by virtue of the Agreed Order of Revocation, Registrant currently lacks authority to practice medicine and dispense controlled substances in Texas, the State in which he holds his DEA registration. Accordingly, I will order that his registration be revoked.

ORDER

Pursuant to the authority vested in me by 21 U.S.C. § 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration AW2558750, issued to Richard W. Walker, Jr., M.D., be, and it hereby is, revoked. Pursuant to the authority vested in me by 21 U.S.C. § 823(f), I further order that any pending application of Richard W. Walker, Jr., M.D., to renew or modify his registration, be, and it hereby is, denied. This Order is effective [INSERT DATE THIRTY DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Date: January, 27th, 2017

Chuck Rosenberg
Acting Administrator

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